

# DO HUMAN RIGHTS APPLY TO CHINA? A NORMATIVE ANALYSIS OF CULTURAL DIFFERENCE



*Chad Hansen\**

## **Introduction: Rawlsian reasoning**

At about the time that Mao launched his Cultural Revolution with the slogan 'to rebel is justified,' John Rawls was starting a cultural revolution among the smaller community of Anglo-American philosophers. His two principles of justice have come to be among the most familiar words in modern philosophy.

The first statement of the two principles reads as follows.

First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.<sup>1</sup>

The principles were not revolutionary, but thinking in a disciplined way about normative issues was. Before Rawls, the accepted view was that normative ethics was hardly a respectable enterprise — more suitable for newspaper advice columnists than for serious philosophers. Rawls was revolutionary in part because he offered not only a substantive theory of justice, but a seemingly powerful new form of argument for normative theory — reflective equilibrium:

In searching for the most favoured description of this situation we work from both ends .... By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted. This state of affairs I refer to as reflective equilibrium. It is an equilibrium because at last our principles and judgments coincide and it is reflective

\* Reader, Department of Philosophy, University of Hong Kong.

<sup>1</sup> John Rawls, *A Theory of Justice* (Cambridge, Mass: Harvard University Press, 1971), p 60. Rawls has continuously revised the wording of the two principles. The latest is in J Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp xxxiv, 401. Nothing in my argument will turn on subtleties in formulation.

since we know to what principles our judgments conform and the premises of their derivation.<sup>2</sup>

The form of the argument was compelling because the technique of reflective equilibrium coincided vaguely with our new view of scientific reasoning. This was the beginning of the modern heyday of moral objectivism in ethics. The previous generation of philosophers had thought ethics could never achieve that. Rawls found a way to combine theory with data or facts for the theory to explain. We can reason in ethics in a way that is similar to the way we reason in science.

‘There is a definite if limited class of facts against which conjectured principles can be checked, namely, our considered judgments in reflective equilibrium.’<sup>3</sup> The ethical theory that Rawls argued best harmonised Western considered judgments surrounding liberty and equality has come to be known as deontological individualism. It is a successor to Kantian ‘respect for the individual’ and Christian ‘worth of the individual soul.’ Rawls argued powerfully that utilitarianism was not the normative theory that best harmonised those judgments because it was a form of reasoning more appropriate for an individual than a moral theory. It did not take the difference between individuals seriously.

*First statement of the problem: intuitions and reflective equilibrium*

An idealist Chinese critic of injustice shares most of the ‘considered judgments’ reflected in Rawls’ second principle. The philosophical roots of Chinese ‘intuitions’ about equality seem as strong or even stronger than in the Western tradition. The Cultural Revolution understood itself as motivated by extreme egalitarian motives. The first principle, however, hardly figured in either traditional Chinese or in modern Maoist rhetoric of political reform.

Many Western scholars of China have noted the differences between the historically dominant Confucian communalism and Christian-Kantian-Rawlsian individualism. Theodore DeBary and Roger Ames have also drawn attention to the historical context of the emergence of Western individualism. The evaluative attitude toward the individual may have evolved from unique beliefs emergent in Christianity especially during the reformation. Other social changes accompanying the rise of industrial capitalism, science, the conflict of church and state, and so forth, all are crucial to telling the story of the development of individualist moral values. Reflecting on the Chinese case raises worries about the promise of objectivity in normative judgment. It makes the value of equality in the just distribution of goods look like a plausible

<sup>2</sup> A *Theory of Justice* (note 1 above), p 26.

<sup>3</sup> *Ibid*, p 51.

cultural universal, but suggests the priority of liberty might be a cultural peculiarity.

*Historicity and objectivity*

These concerns about the historicity of Rawls' 'moral facts' dovetails with an obvious temptation to rulers and governments of Asian states. They can appeal to this intellectual view to buttress their resistance to international pressure for human rights. The 1993 'Bangkok Declaration' did resist strong pressures to reject universal human rights, but appealed obliquely to the intellectual worry:

recognising that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds ...

Let us call this use of the historicity of values to undermine the normative status of rights, a *Bangkok attitude* or *objection* to human rights. In addition to Roger Ames, Henry Rosemont has recently been most outspoken in insisting that the taste for ethical individualism is not merely a cultural peculiarity; it is a cultural bias that is morally dubious.<sup>4</sup> It rests, he thinks, on a seriously flawed conception of the individual — flawed because it is unrealistically abstract. Confucianism, he argues, has a more rationally acceptable conception of human nature — one that recognises the inherent involvement of social relations in the characterisations of persons:

For the early Confucians there can be no *me* in isolation, to be considered abstractly: I am the totality of roles I live in relation to specific others. I do not *play* or *perform* these roles; I *am* these roles. When they have all been specified I have been defined uniquely, fully and altogether, with no remainder with which to piece together a free, autonomous self.<sup>5</sup>

Ames rests with a more purely descriptive claim about Chinese thought, while Rosemont's concern is normative.<sup>6</sup> I want to focus on the normative

<sup>4</sup> Henry Rosemont Jr, 'Why Take Rights Seriously? A Confucian Critique' in Leroy S Rouser (ed), *Human Rights and the World's Religions* (Notre Dame, Ind: University of Notre Dame Press, 1988), pp 167–82. Rosemont's arguments are complicated not only by his challenge to Western background beliefs, but also by his way of characterising morality and his related arguments about relativity. These are complicated issues which deserve fuller discussion, but I will not be able to address these issues in the detail they deserve here. I shall have to make do with noting where I agree with and depart from Rosemont on these deeper issues and continue my focus simply on the availability of the judgment that governments should protect human rights.

<sup>5</sup> Rosemont (note 2 above), p 177.

<sup>6</sup> Roger Ames, 'Rites as Rights: The Confucian Alternative' in Rouser (note 4 above), pp 199–214.

question as opposed to the purely descriptive, historical one. Using the descriptive claim to support a Bangkok objection to human rights runs the danger of confusing moral truth with moral knowledge. One could simply note that people have rights whether or not they know about them or historically acknowledge them.

### Disambiguating the Bangkok challenge

Obviously, current political debates in Hong Kong reverberate with this familiar worry. Is Western power arrogantly dictating and imposing its own ethical views on the economically and militarily less powerful countries of Asia? What are the normative implications of the historical insight that China and the West start from different 'considered moral judgments'? The canonical (but ambiguous) form of the normative Bangkok objection is 'human rights do not apply to ...' (I shall fill the blank with 'Greater China' for purposes of this discussion.) The assertion is ambiguous in that it blurs the descriptive and normative issues. Thus, it invites several distinct responses. Some are trivially easy and some more complex and profound. I shall briefly mention and set aside several of these responses. All raise interesting questions but I want to focus here on some of the more complex ones.

One cluster of issues, international law, I shall mainly avoid. The legal issue is complicated by interpretative questions, questions about the legal status of the United Nations Charter, questions about who has agreed to it and in what form, questions of sovereignty, of what counts as interference in other countries' internal affairs, and so forth.<sup>7</sup> Although avoiding formal legal issues, I shall address related ethical issues: what counts as appropriate conduct of *moral* relations between divergent 'moral communities.'

### *Accepting Rawls and denying universality*

The first way of answering Bangkok objections to human rights assumes that human rights are morally required in Western societies but not in Asian societies. Human rights (basic liberties such as freedom of speech, press, religion, freedom from arbitrary punishment) do not apply to all humans — only to those whose traditions have generated such concept and principles.

The correct and easy answer is that in that theory, rights clearly apply to all humans — in virtue of the very abstraction to which Rosemont objects. Individual rights are rights against traditions, religions, and governments — all social institutions. They apply if you are an individual person — moral agent,

<sup>7</sup> Some argue that ethical issues are presupposed in legal interpretation, in which case my reasoning may be relevant to questions of international law concerning different moral traditions, but I will make no attempt to address this issue directly. My argument here concerns the aspect of legal theory that deals with legislative justice. Should the governments in question enact legislation or otherwise adopt institutions and practices that protect a substantial realm of individual freedom?

rational being, etc. While this quick answer is correct, it does seem a little beside the point. It is not the most charitable interpretation of the Bangkok, historicist worry. This response to the 'Bangkok' position assumes it accepts the Western theory and disputes what its implications are. It is unlikely that the objector is assuming that Rawls' principles are sound and disputing only their application to rulers and governments which happen not to accept them. Certainly, Rosemont is not doing that.

A second response, sometimes invited by official statements of Asian governments, also seems to accept human rights theory and argue that it entails that such rights apply only when certain conditions hold. This is a more tempting line, since Rawls' own theory does recognise that some circumstances might make it rational to suspend the priority of maximal equal liberty — say to deal with mass starvation. The exact conditions of this special case are complicated and the issue is a difficult one within a Rawlsian theory. In any case, Greater China does not present a classic case of an exception on these grounds — although one might argue that it did at the beginning of the Maoist era.

Again, I shall not pursue this response very far. I doubt for the same reasons whether it plausibly captures the full force of a Bangkok attitude. I doubt, too, whether it accepts the objective validity of Rawlsian principles and engages with us in argument about a detail. The tenor of the objection is to any Rawlsian aspiration to objectivity, and embraces some version of historicist, normative relativism.

#### *Normative reasoning and relativity*

Let us open ourselves to the relativist thrust of the Bangkok view by thinking of morality, following Rawls, as the standards that guide our day-to-day evaluations: our praising, blaming, excusing, feeling guilty or angry, and so on. They are not merely idealised descriptions of *actual* social behaviour. It is important, that is, not to characterise Chinese morality by the behaviour of its current leaders or broad population. Morality is the idealised *standards* governing our *evaluation* of behaviour. Such evaluations are relatively alike within any one moral community. They differ in interesting ways across different societies.

We can now build a bridge between Rawls' reflective normative theorist and Ames' sociological analysis by accepting the hypothesis that these standards are the outcome of normative discussion within moral communities.<sup>8</sup> We reason with our neighbours about ways (*daos*) to evaluate, guide and harmonise

<sup>8</sup> See Alan Gibbard, *Wise Choices, Apt Feelings: A Theory of Normative Judgment* (New York: Oxford University Press, 1990), p 346. Gibbard does not deny that some moral standards may be genetic adaptations, but the most important one is the adaptation to engage in moral discourse, to be moved by other's judgments, and to expect them to be moved by ours. See Philip Kitcher, 'The Evolution of Human Altruism' (1993) 90 *Journal of Philosophy* 497–516 for an excellent discussion of the evolutionary issues surrounding the genetic disposition to qualified altruism.

our actions. We carry on moral reflection in groups and naturally adjust our attitudes to harmonise with those of others in our community.

We can locate part of our sense of morality's *objectivity* within this more social conception. Morality is not simply how I *feel*, but how I am *guided* in feeling by standards and a language of evaluation shared by my linguistic-moral community. We expect the norms guiding moral intuitions to gather wide support and yield agreement in attitudes and reactions. We characterise as 'moral' only those normative reactions that we expect to be taken as seriously regulative within our communities.

This does not mean that morality is simply *mores*. Morality should be distinguished from social mores by its more reflective character. Morality is characterised by what Gibbard calls 'modest objectivity'<sup>9</sup> or what Blackburn calls 'quasi-realism.'<sup>10</sup> Moral reasoners in a community do not simply agree on evaluative attitudes, they also discuss and share second-level standards for justifying those attitudes and on deeper reasons for those standards and so forth. Right and wrong are understood as depending on how people are *justified* in feeling, not by what people happen to feel. The standards of justification are themselves social, but, again, we do not accept them as second-level norms *simply* because our society so uses them.<sup>11</sup> So this conception of morality need not abandon normative reasoning or substitute sociology or history for reflective thinking. Still, it accepts that 'reasonable' as applied to moral attitudes is a public, conventional concept which may differ in different moral communities.

Rosemont's concern thus ties appropriately into our social discourse conception of the development of moral attitudes. He observes that Western *arguments* for rights, which seem compelling to Western reasoners, would not have convinced Confucius. Ames suggests that the very concept of 'rights' is unintelligible to someone within a *genuinely* Chinese moral-conceptual framework. Now we can shift from the blunt normative issue of whether China should have human rights to a more neutral worry that is still reflectively normative. Would any argument for human rights 'work' in a Chinese context? Could we make conceptual sense of and convince someone culturally Chinese (given their first-level intuitions and second-level norms) of the correctness of a system that maximises equal liberty and freedom from state coercion? Could we imagine a conclusion emerging from discussion *within* a Chinese community of moral reasoners, given their initial shared attitudes and first- and second-level norms of judgment?

<sup>9</sup> Gibbard (note 6 above), pp 201–3.

<sup>10</sup> Simon Blackburn, *Spreading The Word: Groundings in the Philosophy of Language* (Oxford: Clarendon Press, 1984), ch 6.

<sup>11</sup> Some may use this criterion to distinguish between moral and legal claims. Legal claims, they may argue, are justified by second-level standards, but those standards themselves have no justification. They are the standards of the legal system in virtue of their being institutionalised.

This question is still normative because we accept the second-level procedural norm implicit in Rawls' reflective equilibrium. People *should* judge as moral what accords with the standards of reasoning that best justify their existing considered moral judgments. A Westerner's own commitment to this kind of rational autonomy requires her to respect different moral points of view as long as they are seriously and sincerely reflective. She still has room to say the other community is wrong but must grant they have reasoned rightly by their own lights and further grant that so reasoning is the right thing to do. Western reasoners must conclude that Chinese reflective moral reasoners would be wrong *internally* simply to accept Western standards.

### *Universal moral attitudes*

This brings me to a third kind of response to Bangkok objections. One line supporting human rights or liberty treats the issue as being about whether there are pan-human moral attitudes or standards. Are there universal human moral intuitions which are not the product of variable, historical moral discourse? If there are, do those attitudes favour human liberty? Answering 'yes' directly contradicts the assumption of the Bangkok position, but such an answer is not easy to prove.<sup>12</sup>

I suspect there are some universal moral intuitions; I think Mencius<sup>13</sup> might have been roughly correct in his characterisation of them (on what I call the 'weak interpretation'<sup>14</sup>). But I doubt that they are detailed enough to yield reliable intuitions about this controversial issue.<sup>15</sup> In any case, I shall forgo the 'universal-moral attitude' response to a Bangkok objection. I agree that moral reactions and norms of discussion are *largely* culturally shaped and that it would be hard to sort out which are and which are not. In laying this response aside, I do implicitly accept some of the thrust of the Bangkok, anti-universalist position. Moral attitudes, including probably the priority of liberty, are best understood as socially agreed attitudes.<sup>16</sup>

<sup>12</sup> It is easy enough to claim that each person wants him or herself to be free, but it is harder to show that all people have a pro-attitude toward a scheme in which all are as free as they can be while still being equally free.

<sup>13</sup> *The Mencius*: 2A:6 and 6A:6.

<sup>14</sup> Chad Hansen, *A Daoist Theory of Chinese Thought* (New York: Oxford University Press, 1992), pp 168–74.

<sup>15</sup> For example, Mencius thought humans were naturally inclined to benevolence. They are inclined to other moral behaviour by something like a social 'shame' response. This suggests that there is a genetic sociability that underlies a range of possible conventional moralities. We are inclined to accept the content of our community morality.

<sup>16</sup> Arguments in favor of a universal attitude of moral autonomy would normally take the form of those offered by Piaget (Jean Piaget, *Le Jugement Moral Chez L'Enfant* (Paris: Alcan, 1932)) for a parallel conclusion about physical concepts. The main reference here is Laurence Kohlberg, *The Philosophy of Moral Development (Essays on Moral Development*, vol 1 (San Francisco: Harper & Row, 1981)) and *The Psychology of Moral Development: Essays on Moral Development*, vol 2 (San Francisco: Harper & Row, 1984). For an interesting presentation of the view that traditional Confucian thinkers do have strong conceptions of moral autonomy, see Heiner Roetz, *Confucian Ethics in the Axial Age* (Albany, NY: State University of New York Press, 1992), pp xiii, 373.

*Ideal outcome of moral reflection on cultural differences*

I shall look a little more deeply into another normative issue with an objectivist pull. What are the normative implications when the moral intuitions of different communities clash? The mere fact that someone else disagrees has little or no relevance to the truth of our claims, moral or otherwise. It is not *mere* disagreement that justifies normative hesitation, but informed, deliberative, wise disagreement. A reflective thinker who disagrees can still be wrong, but when we encounter such disagreement it does *and should* give us pause. We need a story of why the disagreement is there.

There is another feature of reflective disagreement that is interesting. When two reflectively rich, coherent, *moral* perspectives clash, each is *likely* to conclude that they cannot both be correct. That is, communities with highly developed second- and third-level discursive appeals and supports for moral claims and attitudes are likely to treat them as adequate for settling moral issues. Both are likely, therefore, to be objectivists about moral inquiry. In the Chinese-Western case, both sides are objectivists. *Prima facie* both are bound to conclude that if a moral position could capture the sound normative insights of both, it would have a strong claim to be a more correct morality than either taken alone — hence the perennial interest in the synthesis of East and West.

The intelligibility of this goal arises since we both assume the objectivity of moral judgments. This assumption distinguishes moral inquiry from mere mores. In moral judgment, we expect others to agree and share our attitude. Failure to obtain that agreement normally prompts moral discussion stimulated by our refusal to accept naive relativism. Neither tradition accepts that the mere fact of a community attitude makes our conclusions moral. Given existing Western *and* Chinese second-level norms about moral reasoning, a morality that can gain agreement of a wider, reflective community of moral reasoners must command our respect.

I agree with Blackburn that a first approximation of any synthesis will normally be more permissive than either of the clashing traditions.<sup>17</sup> According fundamental normative respect to another tradition is to treat it as a possible or permissible moral system. We thus accept that a permissible moral system permits X even though our own moral system forbids it. The first approximation of a synthesising position would say, accordingly, that it is permissible to make X permissible. Complexities abound,<sup>18</sup> but this suggests that any emerging

<sup>17</sup> Blackburn (note 6 above), pp 201–2.

<sup>18</sup> We need to avoid a purely syntactic conception of permissions to rule out the following kind of permissions: 'governments are permitted to exile nuns from religions that oppose their rule.'



'common' morality would normally expand permissions (freedoms) and reduce prohibitions and obligations.<sup>19</sup>

Implicit in this approach is another way in which we should take the Bangkok sentiment seriously. Independently of international law, we do have to give respect to the reflective determinations of a different moral community. In seeking synthesis, we are doing that: allowing that when a different moral community reaches a conflicting judgment in reflective equilibrium it is a reason for seeking some kind of higher-order resolution of our disagreement.

The issue is, however, tricky because we are not required to abandon our own most coherent judgment in the meantime. The point is that becoming aware that extensive reflection has not produced agreement in some moral issue makes our total moral outlook slightly *less coherent*. We now have to bring the awareness that another community has *appropriately* reached a different conclusion into reflective coherence with our other moral beliefs. If we do not consider moral reform, the challenge is to tell a convincing epistemological story that undermines the *prima facie* moral authority of such a rich, reflective moral tradition. If we cannot, then we must accord it respect and seek moral truth somewhere between the two traditions. I shall not, however, here attempt to go further in trying to construct that *harmonious truth*.

#### *Subjective and objective rightness*

We can explain the complexity of this need for respect in dealing with rival reflective moral communities from the Rawlsian position. On the one hand, it assumes that if the two principles best justify our considered moral judgments in reflective equilibrium, we ought to accept them as true. To accept them as true, however, is not to accept that their truth depends on what attitudes we have. To accept them as true is to accept them as true for those who engaged in the Spanish inquisition even though they did not share our modern attitude. Similarly, to accept them as true is to accept them as true for Chinese governments although they do not share our intuitions. Hence our first response.

On the other hand, we simultaneously endorse a *second-level norm*. It is a norm of subjective responsibility. People ought to accept the moral principles that best justify their considered judgments in reflective equilibrium. Thus, by hypothesis, we should say members of other communities who accept rival

<sup>19</sup> This can only be an approximation, not a final judgment. One of the interesting differences between Western and Chinese moral attitudes involves the optimism about how much moral suasion can achieve and thus how aggressively the social mechanisms of moral anger/guilt-shame/blame/praise can be used. Western morality tends to be, in Gibbard's words (note 8 above, pp 303–9), a 'diffident' morality. Confucianism and Daoism split partly on this issue, but Confucianism, certainly, tends toward the 'imperious' ambition to get more from moral mechanisms. In a synthesis, Westerners might decide that moral mechanisms are more effective than traditionally thought (hampered by unreasonably pessimistic views of human psychology) and choose a more 'imperious' moral stance. One reason for this might be to reduce the reliance on legal and other sanctions.

principles by an equally reflective process have judged rightly about moral issues *in a procedural sense*.

This does not lead to major incoherence because we already make a distinction between being objectively wrong (say because of lack of information) and being blameworthy or subjectively wrong. We can coherently accept that one of us is wrong, but neither has been irresponsible in moral reasoning. We can, and should, continue to believe and advocate our own best moral judgment, but must acknowledge the equivalent authority and rationality of the other community. If we do not, we owe ourselves some coherent reason for thinking it has been less competent in reaching its equilibrium.<sup>20</sup>

This explains why the Greater China case seems particularly troubling to Westerners. However a Westerner may react to anthropological studies of titillating moral attitudes, she can hardly dismiss the awareness that Chinese normative attitudes have as long and as rich a tradition of literate discussion and reflection as has the West. Even if she disagrees with the norms that guided Chinese historical reflection, she cannot avoid a certain respect for both its intellectual wealth and practical success. Thus she must take Rosemont's challenge seriously.

The issue then is what is *subjectively right* from a Chinese moral point of view. The weakened subjective view is not simply about what is actually believed about morality. It is about what a responsible moral agent would be justified in believing given a specified background of moral judgments and attitudes. Subjective rightness, in this sense, is a kind of excuse-analysis. It makes a view, which we may deem wrong, morally acceptable since it is the morally responsible conclusion to draw given the information available to the reasoner.

I shall not examine Chinese moral philosophy in any depth at this point. I shall simply make several general points that bear on the use of a Bangkok view to draw a normative conclusion. I have already made one of the important points: it is not enough for this conception of subjective rightness merely to describe what moral attitudes people actually do have. We have to show that those attitudes are the ones best warranted from that moral perspective. It is therefore strictly irrelevant whether China actually had a tradition of human rights prior to the Qing dynasty. Nor is even a consensus of *actual* moral judgments of the existing community relevant. Neither are we engaging in sociological *predictions* about what rights will survive in Hong Kong or eventually be adopted in China.

Similarly, the question is not about Chinese governments or leaders. We are interested in what judgment *would be warranted by community standards* within

<sup>20</sup> In the case of the Confucian orthodoxy, one could claim that while Chinese philosophy was suitably reflective in its classical period, the medieval and early modern forms of Confucianism were too much like religious ethics to count as reflective in the appropriate sense. Another might be to deny that it is in equilibrium — there is a substantial portion of that moral community (the people v the rulers) who advocate greater freedom and democracy.

a reflective Chinese community. Our focus, by virtue of being on normative issues, is on the judgments that would be *justified* by reflective equilibrium starting with the underlying intuitions and second-level reasoning standards of the Chinese moral community — the moral point of view of idealised Chinese moral discussants.

Most academic ways of putting the Bangkok position rather carefully limit it to Confucianism, and in particular to classical Confucianism. For a normative claim of subjective rightness, however, those claims, even if true, are irrelevant. The question arises today in Hong Kong, not two thousand years ago in Lo Yang or Chang An. 'Chinese tradition' is a rich concept of which Confucianism is only a part — however important a part. Hong Kong now has a tradition of abiding by the rule of law that is about as old as the abolition of slavery in America. China as a whole has had as long a history of contact with Western ideas as has North America, with a literary and republican revolutionary tradition already almost a century old. It is filled with the advocacy of 'Western ideas' ranging from 'Mr Science and Democracy' (Chen Duxiu) to half a century of Marxist ideology. Moreover, overseas Chinese with experiences in almost every other country of the world are members of the moral community. Kang You-wei, Tan Si-tong, and Liang Qi-chao, radical reformers of the late Qing, are now figures that belong to Chinese history as Abraham Lincoln belongs to American history.<sup>21</sup> Sun Yat-sen is called the 'George Washington of China.' Ames and Rosemont's Classical Chinese Confucian is not the model of the idealised Chinese reasoner that is relevant to this question today.

Although technically irrelevant, the focus on early or classical thought does have some normative implications when we are considering a community rather than a purely individual process of moral reasoning. In a modern Chinese community, some extreme conservatives may reject appeals to these moderns on the ground that they have already been seduced by Western values and do not represent 'authentic' Chinese moral consciousness. Thus focusing on the great classical tradition could be rhetorically important in internal moral discourse.

Even if we accept being confined to classical Chinese thought, however, we need not accept the limitation to Confucian thought.<sup>22</sup> Confining our

<sup>21</sup> See A Nathan, *Chinese Democracy* (Berkeley: University of California Press, 1985) for a good presentation of especially Liang's views on democracy and freedom.

<sup>22</sup> As an intellectual point, Rosemont's challenge seems to be carefully limited to Confucius himself. Would there be a way to show Confucius that his conception was wrong and that it should include elements of human rights? I still think the answer is yes and that the way to do it is found in the Chinese tradition itself. Mozi shows that on Confucian assumptions about the goals of moral guidance (family well-being) one can conclude that we should favor a *dao* of universal concern to one of Confucian, partial (based on social relations) concern. See my discussion in Hansen (note 12 above), pp 112–15.

attention to Confucian thought tends toward the irrelevant descriptive subjectivity of 'what did certain persons *actually* believe?' It would be irrelevant for the same reason the official attitude of Roman Catholicism would be irrelevant to the normative question of whether abortion should be legalised. Confucianism is *an* authentic expression of Chinese moral consciousness as Catholicism is of a European one. What is subjectively right from the point of view of either tradition cannot be identified with the view of their orthodoxies.

The Classical Chinese 'Hundred Schools' philosophical tradition is actually anti-Confucian in much the same way Western philosophy is anti-religion! Philosophy starts with Mozi's attack on Confucianism and its theorists are on the defensive throughout the Warring States period. Daoism, Mohism, and Legalism are the best known philosophical rivals but we know of a rich Classical philosophical milieu. Any account of 'pure, indigenous' Chinese attitudes and norms for argument must take account of all these other schools. None is plausibly a Western import.

Classical philosophers, in contrast to Confucius himself, clearly take a pan-human perspective in their moral reasoning. Mohism's moral posture is explicitly 'universal' and in contrast with what Mozi takes to be Confucian partiality and conventionalism. He exemplifies a very early Chinese form of a hypothetical decision approach to the justification of political structure. The dominant perspective in classical moral philosophy is a pragmatic utilitarian approach to the question of what guiding discourse (*dao*) should direct society. This, as I shall stress below, is a fully adequate basis for arguments leading to the conclusion that political systems should leave a large realm of freedom open to individual choice. Finally, even within classical Confucianism, there are perspectives that are remarkably congenial to the construction of liberal arguments. Mencius (probably pushed by Mozi) shows a distinct tendency to interpret the 'mandate of Heaven' as based on the mechanism of popular acceptance. Mencius further postulates a universal capacity to recognise moral qualities in a leader. Of course neither Mencius nor Mozi accepts a view of the leader as delegated-democratic decision maker. Both assume we select him because he is the wisest and best. The democratic component was intertwined with a natural meritocracy together with assumptions of general access to the moral facts and standards.

Xunzi is the classical Confucian who comes closest to the Bangkok normative position. His argument rejected the Mencian claim of a moral human nature and defended Confucian traditionalism on pragmatic utilitarian grounds. Essentially, he argued that social order required preventing advocacy of any rival *dao*. Thus he put the current ruler's position that economic well-being depends on order in the state which, in turn, justifies repressing disagreement and opposition.

What is clearly warranted for most classic thinkers<sup>23</sup> is the use of pragmatic utilitarian reasoning in justifying our social *dao*. The normative subjective question is whether Xunzi's arguments follow from the classical background pragmatic and utilitarian assumptions. It is, as I noted above, irrelevant that he actually took this position or that rulers in China have tended to agree with him. The question *we* have to ask from any temporary, artificial, 'pure' Chinese moral perspective is whether Xunzi was right *by the lights of Classical philosophy*. Do wealth and order require repression of individual rights?

### Utilitarian arguments for liberty and democracy

I have identified a subjective perspective with weak but real normative implications. Its normative force is in the arena of excuses. We can identify the morally responsible position for someone from a Chinese culture to take. It may be different from the position we take to be objectively correct. I have argued, however, that even this weakened form of the question does not clearly excuse a Bangkok attitude. This supplies a weak rhetorical ground for focusing attention on classical thought which gives cause to doubt that Confucian authoritarian conclusions are normatively responsible. Arguments against Xunzi's traditional 'superior-man' authoritarianism are plainly accessible from within a purely indigenous Chinese perspective.

This form of argument is pragmatic utilitarian — a moral perspective that uses a cost-benefit analysis to select the correct moral *dao*. I have not shown exactly how such an argument leads to the opposite conclusion from the one Xunzi drew — that we should guarantee a realm of freedom of individual action. These arguments are familiar to modern readers. The classic argument is that of the utilitarian, John Stuart Mill.<sup>24</sup> Mill's argument has notorious flaws, some of which would actually be less vicious in a Chinese context. For example, Mill's conclusion was buttressed by his faith that truth would triumph in the marketplace of ideas. That has a more naive ring than would a classical Chinese version. Mozi argues more directly pragmatically that one of the problems with the disorder of the state of nature is that 'valuable *daos* are wasted.'

A Chinese version would therefore include a less abstract, more Darwinian claim that the most useful, social-utility producing doctrine will succeed in the competition among *daos*. That kind of attitude was, as pointed out above, widespread even in ancient China. It surfaces again in modern China among the China's modern 'Westernisers' who are overwhelmingly more attracted to pragmatic or Marxist attitudes than to abstract truth systems. Even Maoists saw a social utilitarian argument for 'letting a hundred flowers bloom.'

<sup>23</sup> Mencius may be the only exception and he is not a clear one, as I argue above.

<sup>24</sup> John Stuart Mill, *On Liberty* (London: Longmans, Green, 1913; originally published 1859).

Other utilitarian arguments are clearly available for, for example, freedom of the press. A standard economic analysis shows that corruption makes an economy inefficient. A free press is one (admittedly notoriously fallible and sometimes obnoxious) way to expose and inhibit corruption. It is also a good way to disseminate the information needed for quick and responsive business decisions. It is an efficient way to help economic units rationalise decision making and thus enhance overall well-being. We do not always need truth-seeking arguments to justify allowing free discussion of political, cultural, or scientific doctrines.

Consider some pragmatic goals shared in all corners of 'Greater China.' All of them want to encourage market mechanisms and the capitalist creation of wealth (by whatever name they call it). All recognise that business requires a stable, predictable environment in which to plan and formulate business decisions. All the authorities therefore express overt support for the rule of law. It is easy for the pragmatist to observe that the rule of law and the independence of the judiciary are easier to sustain and protect when there are real multi-party democracy, authority pluralism, and free and open political comment and discussion.

Notoriously, another of the serious practical, political problems facing China that threatens the stability needed for business confidence is the legitimacy of succession. Whatever satisfaction we get from the success of Deng Xiaoping's reforms is balanced by the uneasy awareness that the next leader could as thoroughly undo what he did as he himself undid Mao's policies. Both Mao and Deng recognised and struggled unsuccessfully with the problem of legitimate succession. The communist party as a whole faces a crisis of legitimacy in the eyes of the people who, following wave after wave of political education, have ceased to be affected.

There are many routes to legitimacy: the mandate of heaven and divine right of kings used religious grounding; the long-march generation used another approach (trial by combat — which as I noted, can be tied to the mandate of heaven doctrine). The original, idealistic traditional rationale in China has always been merit — the best and wisest should rule — so writing philosophy and poetry helps give legitimacy. Still, as I have argued, China has a tradition of fondness for identifying merit by popular acclaim. It hardly needs to be pointed out that the communist party has always based its claims to legitimacy on its democratic support, distinguishes itself from old bad 'republic' as the 'people's republic,' and still uses the mechanism of election as a pro forma legitimation technique.<sup>25</sup>

<sup>25</sup> It is important to recognise that we are not talking here about behaviour, but about idealisations, attitudes, and justifications that appeal to a moral community. The point is made if Chinese leaders feel a necessity to assert that they are democratic or to justify their rule by appeal to democratic principles.

Fair and open election is not the only way to obtain that legitimacy but it is a remarkably effective way. It demonstrably legitimates leadership in Chinese societies and its legitimating role has a venerable history in China. We need hardly look farther afield than Hong Kong's own recent history to appreciate this. The element of surprise in a free election exercise is a considerable source of legitimacy — as is the perception of cheating a considerable destabilising one.

The claim that repression aids economic growth is often delivered with a familiar realist sneer — the implication that liberal or moral compunctions are idealistic fantasies. I know of no evidence that repression generally promotes economic wealth. Indeed, such evidence as we have is to the contrary. As a statistician recently pointed out in *Fortune* magazine, the correlation between the wealth of a society and its position on the United Nations Freedom Ranking is higher than the correlation between intelligence and good grades in school:

As is well known to every student of statistics, positive correlations range from 0.0 to 1.0. The correlation between the heights of husbands and wives, for example, is about 0.3. The correlation between IQ and elementary-school grades is 0.6 — suggesting that intelligence powerfully affects but does not totally determine the grades.

Using UN data, we calculate the correlation between political freedom and gross domestic product per capita at a smashing 0.7.

This correlation does not show that freedom *causes* wealth, but it clearly undercuts any argument that denial of freedom is necessary to create wealth. A pragmatic argument with false probabilities simply loses.

Recently, the communist world came to the view that general utilitarian considerations count in favour of less control and decentralisation. The authoritarian's fondness for a single *dao* is not the obvious conclusion for a reflective, pragmatic Chinese reasoner. He could easily conclude that Xunzi was wrong — as his contemporary Daoists argued even then.

### Possible counter-arguments

#### *Contingency of the proof*

Several objections could be made to this pragmatic approach to Chinese justifications of liberty. I shall mention some of them very briefly and show the direction a response might take. First, it may be argued, following Rawls, that even if pragmatic, utilitarian arguments can justify a scheme of rights, they do not justify the abstract priority aspect of Rawlsian theory. It yields merely an empirical, contingent conclusion about economies, psychology, society, and the world that greater freedom and wider political participation lead to good

consequences. Those contingencies *could* be reversed and if they were, the argument for human rights would vanish. Pragmatic arguments leave rights vulnerable to counter-argument, for example, that a scheme of human rights might undermine public order and lead to crime and the horrors we see in American cities.

The Rawlsian allows no such response or counter-argument from the authoritarian. A utilitarian argument does. The challenge, however, was not to give a utilitarian justification of perfectly non-defeasible freedom. Utilitarian arguments depend on the real-world consequences of political principles. Still, we should insist that the mere assertion of *possible* consequences is neither enough for the libertarian nor for the authoritarian. The challenge is to show that the best consequential reasoning, given the real world as it is, justifies a scheme of political liberty, democracy, and freedom. That challenge is met as long as the statistics and consequential reasoning are sound. Authoritarians still must show that the good consequences follow from restricting freedom. The weight of empirical evidence is against them. Merely to allow a utilitarian response is not to lose the debate.

*Internal coherence: rights must be non-contingent*

A kindred argument, however, could be deployed to object that the consequentialist position is *internally incoherent*. One could argue that the utilitarian efficiency of liberty is lost if the liberties are not secure. If people are worried that liberties and powers are constantly liable to be removed whenever objective conditions change, then the utilitarian advantages (predictability, forward planning, etc) are lost. Greater utility derives from liberties which are relatively invulnerable to temporary circumstances. The best utilitarian outcome, a Rawlsian might argue, comes from valuing liberty above temporary economic advantage. Therefore we should enshrine rights in some kind of higher law, less vulnerable to change. A scheme of freedom achieves greatest utility when it can veto even democratically designed economic policies aimed at general welfare.

This, however, is not an objection so much as the utilitarian route to an even stronger argument for a relatively invulnerable scheme of liberties. The advocates of a Bangkok position often miss the point that classical Chinese ethics does have access to exactly this kind of second-level ethical justification. Chinese ethical disputes were not a simple matter of advocating different first-level attitudes about actions. Mozi first raised utilitarian considerations in China as second-level considerations. He thought of a *dao* as the public moral stance and proposed utilitarian considerations as the higher-level standards for choosing a public *dao*.

Hence, this objection does not undermine a genuinely Chinese form of consequential reasoning in defence of a *practically* or legally secure scheme of



liberty. Such an argument is clearly available to reasoners from within Chinese tradition. It merely requires observing that the probabilistic consequences were miscalculated by Xunzi. Given modern econometric arguments, Mozi's claims can easily be brought up to date. This would provide a straightforward justification of a legal and moral priority and relative political invulnerability for a scheme of ordered liberty.

*Not the same concept of rights — neither abstract nor absolute*

Defenders of a Bangkok view might now object in a different way. This solution, they might argue, must still piggyback on a Western moral consciousness. It amounts to saying that we have discovered that a Western moral attitude is pragmatically more defensible than traditionalist Confucianism. The challenge, however, is to show that the moral attitude, the concept of liberty or freedom or rights themselves, could have emerged from a purely Chinese conceptual and argumentative base.

That conception of the challenge threatens again to reduce it to one of merely descriptive academic interest: the irrelevant form of moral subjectivity. To have any normative bite, the point should relate to the appropriateness of advocating rights in a Chinese context.

*Relevance of Confucian intuitions along with pragmatism*

Finally, a defender of the Bangkok analysis might object that I have overestimated both the residual force and the endurance of the pragmatic or utilitarian elements in Chinese consciousness. While they make their case almost exclusively from the most traditionalist Confucian attitudes, I mainly skirt around them. The Confucian attitudes, however, they might insist, are the ones that historically have done most to shape Chinese moral attitudes and intuitions. Any community discourse leading to moral development and reform will thus have to cope with a traditionalist, authoritarian, even xenophobic friction that, given its deep roots, must shape any Chinese conclusion.

The objection may be formulated in such a way as to avoid making it merely predictive or sociological. It takes my point that a moral community engaged in moral discourse must start from where it is. And even if I have shown that pragmatic considerations are fully available to Chinese reasoners, they must still conduct their reasoning against a background of other more Confucian attitudes that are quite different from those in Western moral communities. We cannot ignore the entire set of 'considered moral judgments' which are to be brought into equilibrium.

I am prepared to grant this objection, therefore, and even to grant its relevance. Moral reasoning, Chinese and Western, as Gibbard argues,<sup>26</sup>

<sup>26</sup> Gibbard (note 8 above), pp 219–32.

proceeds with two kinds of checks. One is the broadly pragmatic, second-level utilitarian checks I have been focusing on. Cultural relativism is introduced into this pragmatic level mainly in the evaluation of what counts as benefits and costs — the concept of the good. The other check is intuitive plausibility. We simply have to ask if the conclusions reached by our moral reflections 'sit well' with our considered judgments or if they come to sit well after some familiarity and experience with them.

I have been emphasising a stunning parallel between Chinese and Western moral development. We see a traditional, intuitive point of view confronting a reforming, utilitarian insight. In the West, however, the dialogue was between deontological, vaguely Kantian conceptions of the pure goodwill: reverence for duty and fidelity versus utilitarianism. In China, it was between a Confucian-particularistic, family-based, virtue-structured, traditionalist, and hierarchical conception and the reforming, universalist, consequential message of utilitarians. Clearly reason's outcomes will be different in each case — rationally and correctly so.

The conclusion, however, would not be that no one could justify a scheme of rights or liberty from a Chinese perspective, but that the differing background of traditional moral judgments would affect the justification of those rights in significant ways. I tend to agree that the community-based subjective perspective that does have normative implications would be shaped partly by existing 'considered moral judgments.' Exactly how, however, is difficult to say in advance of viewing actual moral debate within the Chinese community. We should resist the temptation to exaggerate them. In conclusion, I shall sketch some of the ways in which existing moral attitudes might validly justify differences in a Chinese conception of human rights.

### **How Chinese rights might differ**

The fact that one conceives of morality as a form of public discourse rather than private mental reflection makes a considerable difference. It naturally and justifiably makes a community more sensitive to the costs of freedom of expression. While it plainly can justify a plurality of competing discourses, a Chinese community, given that traditional construction of what moral debate is about, is likely to be more censoring than a Western community. Freedom of expression is never likely to be seen to justify allowing the advocacy of mindless violence into public discourse. We can imagine a rational Millian justification for political, scientific, artistic, philosophical, and moral debate, but it would be much harder to make total freedom from censorship seem rational.

Many have noted a more social feature even of the thought of Chinese radicals. They tend to see an ultimate coincidence of private and public interest. In Hu Shi's words, they envision a 'great self' of which the individual

'self' is an integral component. This suggests, only, that their conception of human rights grew together with a Rousseauian or Kantian conception of the general will. Anglo-American philosophy is somewhat suspicious of such conceptions and insists that individual rights must be 'trumps' or limitations on what may be done in the name of the general good.

I suspect this general feature of modern Chinese liberalism is connected with the Chinese conception of meaning as *public*. Meaning is grounded in convention, history, and tradition rather than private subjective experience. Even as they reacted against Confucianism, Chinese radicals from Hu Shi and Chen Duxiu to Mao Zedong have felt a need to ground their reforms in other features in the Chinese tradition. Modern Chinese dissidents still think about their problem in ways that are very different from the ways Western individualists would. They are still asking Mozi's question: where do *we* go now? What is the way to develop the tradition?

All of these reservations bear on normative issues only in the form of considerations of subjective rightness. None of it suggests that the Rawlsian argument is wrong, nor does it bear strongly on the question of what kinds of rights and freedom would be justified if we based it on universal moral attitudes or derived it from a theoretically justifiable bridge-morality. These considerations merely suggest that a subjectively rationally-warranted Chinese conception of rights might be different from an Anglo-American one. It does not show that they cannot have one of their own or that it may not be, in some ways, even more radical than the Western one. The argument here, in a sense, merely preserves the appearances. Contrary to some scholarly and politically motivated claims, it is plainly possible for someone from a Chinese ethical perspective to conclude that democracy and human rights are morally justified. That argument has appeal even when one starts from an artificially 'sanitised' classical Chinese moral perspective.

I do not want to minimise the difficulties facing the ideally reflective Chinese community in justifying a conception of freedom that is coherent with the 'considered political judgments' that characterise Chinese tradition. It does encounter puzzles about authority. Aside from the Daoists, pragmatic arguments have seemed to require a final authority on matters of guidance. The conception of a sage-like intuition seems more attached to some actual person than is the conception of rationality, validity, and soundness. Associated social practices are not traditionally available to help fill out a Chinese conception of free discussion. These include such traditions as (1) parliamentary debate, (2) balloting as a decision procedure, (3) voting rather than consensus in group decision making, (4) the abstract model of scientific objectivity, and (5) a history of dealing with political decisions by institutional arrangements rather than by cultivating and then selecting wise, good men for political positions. The devil, as usual, will be in the details.